

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5927 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RUPSING NAVABHAI JADAV

Versus

STATE OF GUJARAT

Appearance:

Mr.J.T.Trivedi for Petitioners
Mr.K.G.Sheth, learned A.G.P.
for Respondent Nos. 1 to 4

CORAM : MR.JUSTICE M.R.CALLA and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/04/99

ORAL JUDGEMENT

Petitioners herein have come with the case that they are Adivasis belonging to the Scheduled Tribe. They had lands in the sim of village Minakyar, Taluka Dahod, District - Panchmahals. A statement Annexure 'A' has been annexed with the petition giving the details of the

land, which were held by the petitioners or their respective predecessors in title. The case of the petitioners is that their lands were sought to be acquired for the purpose of Minakhyar Irrigation Tank Scheme, the construction of which had commenced in 1956-57. While the construction was going on there was a change in the Scheme and the lands of the petitioners, as shown in the statement Annexure 'A' with the petition, were acquired by private negotiations in 1962-63. It is also the case of the petitioners that they were assured that they would be rehabilitated so that they can earn their livelihood by cultivating their lands, which may be given to them and that payment of compensation was also assured. It has also been averred in para 2 of the petition that some meagre payments were made in respect of the standing crops, expenses of tilling the land etc. The grievance has been raised that the assurances for rehabilitation etc. were not fulfilled and that compensation was also not paid. It has also been stated that no Award had been made and no notice under S.12(2) of the Land Acquisition Act was given. It has also been alleged that despite repeated representations, no relief was given. On the basis of the amendment, para 4-A was inserted in the body of the petition and in the contents of this para 4-A it has been stated that the facts of the present petition are by and large similar to those in Special Civil Application No.3605/89 wherein the lands were acquired by private negotiation on 12.3.56, but the amount of compensation was paid in 1984, but shifting and construction charges were not paid and rehabilitation of the petitioners thereof was not made, though promised. The prayer has been made that the respondents be directed to give compensation together with interest thereon as provided in the Act or the respondents be directed to return the possession of the lands described in Annexure 'A' to the petitioners together with suitable amount of compensation and the respondents be also directed to rehabilitate the petitioners suitably or in the alternative to restrain the respondents from disturbing the petitioners in their enjoyment and possession of the lands of old S.No.101, Block No.157 equivalent to new S.No.85, Mouje Minakhyar, Taluka Dahod, District Panchmahals in any manner whatsoever. With these averments, the Special Civil Application bearing date of 10th August, 1990 appears to have been filed in this Court on 10.8.90.

While it is clear that the compensation is now claimed through this petition with regard to the lands, which had been acquired by private negotiation way back in the year 1962-63 i.e. after a period of 27 years, the

afidavit-in-reply dt.24.3.92 has been filed by the Executive Engineer (Civil), Panchayat Minor Irrigation Division, Panchmahals wherein it has been stated that the lands in question were acquired 20 to 30 years ago, and payments of compensation as per Award was also made to the concerned persons about 20 to 30 years ago. The petitioners allegation that no Award had been made regarding the lands in question has been contested and it has been categorically stated in Para 5 of this Affidavit in reply that the allegation that Award had not been made was factually incorrect. It has been stated that the Award was made on 14.7.64 by Assistant Collector & Land Acquisition Officer, Dahod and a copy thereof has been placed on record as Annexure 'I' with the aforesaid reply alongwith statement accompanying the said Award mentioning the names of the interested persons and the amount of compensation and solatium. It has been then stated that the amounts mentioned in the said statement with the award must have been paid to the concerned persons in 1964 and whereas the matter is very old, it was not possible for the office of the Executive Engineer (Civil) to trace the relevant Vouchers, etc. in this behalf after a period of nearly 25 years. It has also been stated that as per the petitioners themselves representations were made only in the year 1989-90 and the only representation, which has been received, is the representation dt.2.2.90. In para 7 of the affidavit -in-reply, it has been again stated that the land in question was acquired in accordance with law and the amounts of compensation were determined at the relevant time and paid accordingly. With regard to the alleged assurances, about which the petitioners have raised a grievance that they had not been rehabilitated, it has been stated in para 8 that as per the record no such assurance was given. It has also been stated in para 8 that village people of Minakyar had sent applications to the Collector, Panchmahals for grant of the land for rehabilitation and that village people were offered waste land at Brahamkheda and Kharoda but the concerned Mamlatdar of Dahod had reported that the villagers of Minakyar were not willing to go to Kharoda or Brahamkheda. Reference has also been made to the report dt.20.12.72 made by the Collector, Panchmahals to the State Government pointing out that it was not possible to allot any land to the persons, whose lands were acquired for Minakyar Irrigation Water Tank and Jarikhareli Irrigation Water Tank. It has also been disputed that the facts concerned in Special Civil Application No.3065/89 were similar to the facts of the present case. A rejoinder affidavit dt. 5.11.98 has been filed on behalf of the petitioners in which a stand had been taken

that in the affidavit-in-reply all that has been stated is that compensation must have been paid. The learned counsel for the petitioners has argued that in fact the compensation had not been paid.

We have heard learned counsel and have considered the pleadings as also the documents, which have been annexed by the parties. In the facts and circumstances of this case, when this petition has been filed after a period of nearly 27 years from the time of acquisition and the respondents have taken the stand that the compensation has been paid or must have been paid, it is not possible for this Court to adjudicate the factual controversy, as it involves disputed questions of facts. If at all the compensation was not paid, the petitioners ought to have approached this Court in time and as expeditiously as possible. But it is clear that for the first time, according to the petitioners themselves, their representation was made only in the year 1989 and there is no material to verify and ascertain the factual position with regard to the payment of compensation or otherwise. Besides this, prima facie there is no reason to believe that once the Award had been passed and it has been stated in paras 4 and 7 of the reply that the compensation had been paid accordingly, there is no reason to hold that the compensation was not paid, merely because in para 5 and para 6 it has been stated that it must have been paid. Besides this, the petitioners themselves have stated in para 2 of the petition that some payments were made and even in the petitioners' representation dt.18.12.89 it has been stated that the compensation was deposited with the Mamlatdar, Dahod.. If it is known to the petitioners that the amount was so deposited in the office of Mamlatdar, Dahod it was always open for them to withdraw the same in case the possession had in fact been surrendered by them. In any case, it is not possible for this court to finally adjudicate the disputed questions of facts. This Special Civil Application, therefore, fails and the same is hereby dismissed. Rule is hereby discharged. In the facts and circumstances of this case, the parties shall bear their own costs.